interests of both consumers and upstream providers, such as ISPs, that use other companies' facilities as inputs for their services. The Commission should recognize that it must step back from the marketplace as convergence progresses. As it examines the market in these early days of convergence, the Commission should resist the temptation to interfere with this progress by creating new regulatory mandates that distort investment incentives and harm consumers.

Technological convergence increases the number of competitors in the marketplace by increasing the number of technological and transport modalities for providing any given service, and by automatically increasing the number of providers of any given functionality. Any competitor that can move bits sufficiently quickly to and from end users can provide a full complement of digital voice, video, and data services. Convergence also prevents any one competitor from having bottleneck control of the "last mile" to end users — the only source of leverageable market power that could possibly serve as a predicate for continued regulation. As the situation in Phoenix demonstrates, where there are multiple, facilities-based providers, competitive pressures constrain the market behavior of each provider, spur competitors to innovate and invest, and guarantee customers competitive prices and the broadest array of advanced new services. Economic regulation in such a market not only is unnecessary; it is affirmatively harmful because it introduces inefficiencies that decrease consumer welfare.

Technological convergence also protects the interests of upstream providers, such as ISPs, that rely on other companies' "last miles" to provide service. Regulation is not needed to ensure that ISPs can purchase the ability to establish direct "dial up" subscriber connections over a last-mile provider's network. These providers have strong incentives to provide such connections. For example, U S WEST offers a service called "MegaCentral" to ISPs (and other network hosts, such as corporations with telecommuters) that allows them to send and receive xDSL traffic directly to and from subscribers. MegaCentral begins at only $455 per month for a 1.544 Mbps connection. As a commercial matter, U S WEST must offer ISPs MegaCentral on reasonable terms, and ensure that they have access to MegaCentral on the same terms as U S WEST's own Internet access service, or they simply will turn elsewhere for the product. And the development of competition among multiple last-miles puts more power in the hands of the ISPs, who have the ability to channel their direct-dial customers to one last-mile provider or another.[32] Therefore, this segment of the market, too, can regulate itself without government intrusion.

B. The Commission Should Encourage the Development of Inter-Technology Competition by Permitting Companies To Enter New Markets Without Being Subject to the Regulations of Their Markets of Origin.

In determining how to deregulate advanced services, the Commission's primary goal should be to encourage the development of the technologically converged marketplace described in the previous section, because that market will be able to police itself without regulatory intervention. Achieving this goal depends on enabling network providers operating in one sector of the industry to enter and compete in new sectors, since it is the competition <u>among</u> last-mile network technologies that is eroding the bottlenecks. And this requires a regulatory climate that gives existing providers of last miles the freedom and incentive to invest in the network upgrades needed to expand the scope of their service offerings.

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[32] The Commission should not underestimate the brand power of an AOL with 13 million subscribers or even a smaller ISP with a local following. If a last-mile provider does not permit a customer to reach his chosen ISP, the customer simply will not use that technology and will instead choose a different last-mile provider.

The problem is that regulation to date, which reflects the historical development of the telecommunications industry,[33/] has never contemplated the possibility of such inter-sector competition. Instead, the Commission's rules have focused on each segment of the communications marketplace in isolation, and have singlemindedly used the tool of more regulation to level the playing field <u>within</u> each segment by requiring the incumbent providers in a segment to unbundle their networks for third parties or provide them with other access rights.

Moreover, recent Commission statements and actions suggest that it may carry this same regulatory approach forward to new broadband services. Fully two thirds of the Notice of Inquiry is devoted to reviewing each separate sector of the industry and asking how providers in each sector can be regulated to give competitors maximal access to those providers' new broadband services and facilities, as if the new services were nothing more than simple extensions of the providers' basic services and networks. For example, the Notice addresses incumbent LECs' provision of multichannel video services simply as an add-on to their more traditional services, rather than as a potentially serious challenge to the market power of incumbent cable providers in the MVPD market. <u>Compare</u> Notice ¶ 27 <u>with id.</u> ¶¶ 39-41. Likewise, in its advanced services Memorandum Opinion and Order, the Commission broadly suggests that "advanced services offered by incumbent LECs are either 'telephone exchange service' or 'exchange access'" subject to Section 251(c) unbundling and discounted resale,[34/] notwithstanding that incumbent LECs are using xDSL technologies to provide services that bear

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33/ Indeed, often the market segments themselves are the artifacts of regulation, as is the case with information service providers.

34/ <u>Advanced Services Order</u> ¶ 40.

no resemblance to traditional telephone services — including, in U S WEST's case, VDSL-based multichannel video programming services and attendant on-line services that Congress plainly exempted from Title II regulation.[35]

This approach ignores Congress's instruction that the Commission move to reduce, and not dramatically expand, its regulation of advanced services. It also makes for bad technology policy. A sector-by-sector approach results in a singleminded focus on giving competitors within each segment of the market a mandatory, unrestricted access to the investments and innovations of that sector's incumbents, which destroys the incumbents' ability and incentive to expand their activities into other market segments. A LEC is very unlikely, for example, to make the massive investments and network upgrades needed to deploy VDSL-based multichannel video services in competition with incumbent cable providers if those services are treated as simply a new kind of incumbent LEC service and the investment must accordingly be handed over to competitors at cost. Commissioner Powell accurately described the fallacy of this approach to regulation:

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[35] The 1996 Act added a new part to Title VI, captioned "Video Programming Services Provided by Telephone Companies." Congress amended the definition of a "cable system" to include LECs' telephony plant, where such plant is used to provide video programming. See 47 U.S.C. § 522(7)(C) (defining "cable system" to include "a facility of a common carrier . . . to the extent that such facility is used in the transmission of video programming directly to subscribers"). The amendments also make clear that multichannel video services provided over such telephony plant are to be regulated under Title VI, see id. § 571(a)(3)(A), and Congress specifically exempted these services from Title II unbundling obligations. See id. § 571(b) ("A local exchange carrier that provides cable service through a . . . cable system shall not be required, pursuant to title II of this Act, to make capacity available on a nondiscriminatory basis to any other person for the provision of cable service directly to subscribers"). On-line services that LECs provide in conjunction with video programming over these telephony-plant "cable systems" are also Title VI services, for the very same reason that cable modem services fall under Title VI. See Esbin, supra note 13, at 87.

> Like the beautiful poppy fields that lured Dorothy and her traveling companions to sleep in the Wizard of Oz, the constant mantra that we must 'level the playing field' threatens to lull regulators into thinking that we are doing the hard work of ceding control to the market when we are actually extending regulatory burdens to new or non-traditional providers of services unnecessarily.[36]

The only sustainable strategy in the long run is to give facilities-based network providers in each market segment the freedom and incentive to compete with incumbents in other segments, thereby encouraging facilities-based competition in all markets and at all levels of the network, including the "last mile."

Requiring competitors to carry their basic service regulations with them as they move into providing advanced services violates principles of competitive and technological neutrality. As noted in Part I, advanced service providers from historically different sectors of the industry may compete in a single converged market for broadband, but under the Notice of Inquiry's approach they would not compete equally. Competitors that have their roots in a lightly regulated segment of the industry would have a permanent, artificial advantage over companies that come from a highly regulated segment, even though both provide identical or substitute services, and even though the highly regulated companies have no market power in these new broadband services.[37] For example, if the Commission were to require incumbent

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[36] Commissioner Michael K. Powell, "Somewhere Over the Rainbow: The Need for Vision in the Deregulation of Communications Markets," May 27, 1998, at 3.

[37] Cf. Advanced Services Order ¶ 10 (recognizing that "the incumbent [LEC] does not currently enjoy the overwhelming power" in xDSL and other advanced services "that it possesses in the conventional circuit-switched voice telephony market" because "incumbent (continued...)

LECs to unbundle the components of their VDSL cable services — an action that would violate Congress's instructions, 47 U.S.C. § 571(b) — it would be picking the winners and losers in the multichannel video and adjunct online marketplaces. The cable incumbent would be able to provide service free from any obligation to unbundle its network and could bundle affiliated ISP services with its high-speed data transmission services, while the LECs would subject to every regulation in Title II despite providing essentially identical services.[38/]

The solution is to recognize (as Congress did) that there is a single market for "advanced telecommunications capability," defined "without regard to any transmission media or technology." Act § 706(c)(1). As the Commission staff have acknowledged, this "new statutory category, which speaks not in terms of services and service providers, but of 'capabilities,' may arguably be utilized to develop a new regulatory framework better suited to the fluid types of communications capabilities made possible by the Internet" and the deployment of new broadband technologies that permit the public to access and use the Internet.[39/] Congress gave the Commission the tools (and the obligation) to let this new category develop free from the legacy regulations that apply to carriers' basic services.

37/ (...continued)
wireline carriers and new entrants are at the early stages of deploying" these services).

38/ See Esbin supra note 13, at 87 (noting the possibility of "parallel universes" for cable modem and telco online services, which could be "inconsistent with such fundamental communications policy goals as competitive and technological neutrality").

39/ Esbin, supra note 13, at 116.

C. Because Unbundling and Discounted Resale Obligations Depress Carriers' Incentives To Innovate and Invest in Advanced Telecommunications Capability, the Commission Should Limit Those Obligations to Those "Essential Facilities" for Which No Substitutes Are Currently Available.

As the Commission aptly noted in its recent Memorandum Opinion and Order on advanced services, "[o]ne of the fundamental goals of the Telecommunications Act of 1996 . . . is to promote innovation and investment by all participants in the telecommunications marketplace, both incumbents and new entrants, in order to stimulate competition for all services, including advanced services." Advanced Services Order ¶ 1. The fundamental role of investment and innovation in the deployment of advanced services is made clear by the language of Section 706 itself: If the Commission determines in this inquiry that advanced services are not adequately available, it "shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment . . . ." Act § 706(b) (emphasis added). Thus, the role of the Commission in this inquiry is "to ensure that the marketplace is conducive to investment, innovation, and meeting the needs of consumers." Advanced Services Order ¶ 2.

In particular, the Commission must recognize the fundamental economic truth that requiring a broadband network provider to share an innovation or investment with a competitor — whether through discounted resale or unbundling — necessarily diminishes and often eliminates the network provider's and its prospective competitors' incentives to invest. A network provider invests in new facilities (and in research to develop such new facilities) in order to differentiate itself from other market participants. See, e.g., Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470, 480 (1974) (right of exclusivity in a new technology or product provides "an incentive to inventors to risk the often enormous costs in terms of time, research, and development"). Government rules that impair the ability of a network provider to attain this differentiation deprive it of the benefit of its expenditure and thereby destroy the incentive to invest. A broadband network provider contemplating an investment in an innovation that it knows cannot be used to differentiate its services has no reason to make the investment. Similarly, a network provider that knows that it alone must bear the costs of any unsuccessful innovations, while being forced to share any resulting benefits, will not risk experimenting with innovations that might not prove successful.

At the same time, permitting rivals to obtain an incumbent network provider's advanced-service facilities at cost on an unbundled basis or the services themselves for resale at a discount inefficiently discourages the rivals from investing in their own facilities. If a competitor can avoid all research and development risks by waiting to exploit the incumbent network provider's innovative services and technologies, and if it can abandon those innovations at any time without cost or risk should they turn out to be less successful in the marketplace than anticipated, the competitor itself is discouraged from experimenting, investing, and innovating. See 3A Philip E. Areeda & Herbert Hovenkamp, Antitrust Law ¶ 771b (1996) (if the government "order[s] the [incumbent] to provide the facility and regulat[es] the price to competitive levels, then the [prospective entrant's] incentive to build an alternative facility is destroyed altogether. . . . [Loss of incentive to build] could be extremely serious . . . in the case where either the [entrant] or some other rival could enter the market by some alternative not requiring the sharing of the [incumbent's] facility").

Because forced sharing of innovations undercuts the incentives for all market participants to invest and thereby retards the deployment of advanced services, regulation requiring unbundling and discounted resale must — if applied at all in the context of advanced services — be kept to a minimal scope. In particular, incumbents should be required to provide competitors with access to their facilities and services only where a competitor has a true need to obtain access from the incumbent. That is, as in the closely analogous context of the "essential facilities" doctrine in antitrust law, an incumbent should be forced to turn over a facility for use by competitors only if it is not "available from another source or capable of being duplicated by the [competitor] or others." Areeda & Hovenkamp ¶ 773b; see also MCI Communications Corp. v. American Tel. & Tel. Co., 708 F.2d 1081, 1132-33 (7th Cir.), cert. denied, 464 U.S. 891 (1983) (prerequisite to requiring a monopolist to turn over an essential facility is "a competitor's inability practically or reasonably to duplicate" the facility); Hon. Stephen G. Breyer, "Antitrust, Deregulation, and the Newly Liberated Marketplace," 75 Calif. L. Rev. 1005, 1034 (1987) (because "requiring an inventor . . . to give his secrets away to his competitors discourages innovation," courts have required even bottleneck facilities to be turned over to competitors only in rare instances).

Both Chairman Kennard and the Commission staff have recognized that broadband network providers should be required to make only essential or bottleneck facilities available to competitors. In a speech this summer, Chairman Kennard concluded that competition in advanced services requires "[t]hree simple conditions: identify the essential facilities; give competitors access to them; and make sure competing networks can interconnect with one another." William E. Kennard, "A Broad(band) Vision for America," at 6 (June 24, 1998). As he further stated, "[i]f we do this, there is no need for additional FCC regulation of advanced services, whether offered by the incumbent phone companies or by their competitors," because "competition and consumer demand will take care of the rest." Id. at 7. Similarly, in its recently released working paper concerning cable Internet services, the Office of Plans and Policy concluded that "[a]ny regulatory efforts in this arena should begin with an analysis of whether the operator in question exercises undue market power over an essential service or facility necessary to provide an essential service."[40]

More generally, Congress clearly intended that unbundling be confined to those facilities that a competitor truly needs to obtain from the incumbent in order to compete. In the Title II context, it provided that the Commission "shall consider, at a minimum," whether the failure to provide access to particular network elements would "impair" the ability of requesting carriers to provide service, or, in the case of proprietary elements, whether unbundled access to the elements in question is "necessary." 47 U.S.C. § 251(d)(2) (emphasis added). In articulating these standards, Congress directed the Commission to consider a new entrant's actual need before an incumbent would be required to unbundle any particular element. Section 251(d)(2) shares the same basic thrust as the essential facilities doctrine: whether a competitor is entitled to an incumbent's facilities depends on whether the competitor can reasonably obtain a substitute facility elsewhere or build the facility itself. If a competitor can do so, requiring the incumbent to share the facility serves no procompetitive purpose and indeed undercuts competition by destroying the incentives of the incumbent and entrant to invest and innovate.

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[40] Esbin, supra note 13, at 117.

Thus, if the Commission is to apply unbundling and resale obligations in the context of advanced data services at all, those obligations should be restricted to the bottleneck services and facilities that are not readily available from sources other than the incumbent broadband network provider. As noted previously, broadband services are becoming widely available from a multitude of sources. And with respect to xDSL-technology-based services as a class, for example, all the advanced data facilities used by incumbents can be purchased at market prices from independent equipment vendors. Indeed, U S WEST buys its advanced data equipment for xDSL from outside suppliers; competitors could go to those same suppliers and buy the same equipment. As Commissioner Ness recently noted, "[t]he evolving DSL equipment necessary to carry high-speed digital signals on properly conditioned local loops is available to both the ILECs and the CLECs. So is the associated multiplexing and routing/switching equipment necessary to create advanced high-speed data communications services."[41/] Applying unbundling obligations to such readily available equipment has no competitive justification.

Unbundling and discounted resale obligations are therefore appropriate (if at all) only for the narrow class of essential facilities that are currently unavailable to competitors from any other source and for which there are no comparable functional substitutes.[42/] Where

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41/ Commissioner Susan Ness, "To Have and Have Not: Advanced Telecommunications Technologies" at 8 (June 9, 1998).

42/ A corollary of this is that the Commission should regulate a carrier's provision of advanced services only where the carrier has power in the basic services market that it can actually and demonstrably leverage into the advanced services marketplace. The Commission should not automatically assume, for example, that an incumbent LEC's residual market power in voice telephony services necessarily translates into an unfair advantage in the broadband market, where it has almost no market share and technological convergence is fast creating (continued...)

competitors can obtain needed facilities or technological substitutes from other sources — including network providers in other industry segments using different technologies — they may rely on the market and select among the multiple choices it provides (including, of course, the possibility of arriving at a mutually satisfactory arrangement with the incumbent). And because displacing market forces here has such undesirable economic effects, these limited unbundling and resale obligations should last only for as long as facilities remain bottlenecks in fact. Once functional substitutes are available in the marketplace for a given network provider's "last mile," for example, the limited incremental benefits of continuing to impose strict unbundling duties on that provider are far outweighed by the costs of depressing its incentives (and the incentives of new entrants) to innovate and invest in advanced telecommunications capability.

In words that apply equally to all broadband network providers, Chairman Kennard had it precisely right in his speech to the Federal Communications Bar Association:

> To provide the advanced services, telephone companies will have to invest in advanced electronics. But the telephone companies have rightly asked, why should we make this new investment if we simply have to turn around and sell this new service — or the capabilities of these advanced electronics — to our competitors? If the telephone company has opened up its underlying networks to competition, the competitors can invest in the same advanced services. Where networks are open, I see no reason to require discounted resale or unbundling of these new services and advanced technologies that are available to all.

Chairman William E. Kennard, "A Broad(band) Vision for America," at 5 (June 24, 1998).

42/ (...continued)
functional substitutes for its network facilities. Cf. Advanced Services Order ¶ 10.

D. In Its Zeal To Further Competition in Individual Sectors of the Industry, the Commission Must Not Raise the Costs of Providing Service in a Manner That Prevents Broadband Technologies from Reaching Underserved Communities and People.

Although the Commission's Notice undertakes an extremely wide-ranging inquiry, the one factual determination that the Commission is statutorily required to make is "whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion." Act § 706(b) (emphasis added). As U S WEST demonstrated in its initial Petition for Relief and in Part II above, the pace of deployment in residential markets and smaller and rural communities significantly lags that in business markets and urban areas. Competitors have been quick to target densely populated areas such as Phoenix, but outside these areas, the competitive field is virtually empty.

Some degree of disparity is inevitable. High-margin business services and high-income individual users are clustered in urban areas, and — with the exception of future satellite technologies, which have uniform deployment costs — the per-customer cost of building networks always increases as the population density in a market decreases. The Commission cannot change these basic economic hurdles and force broader deployment through "social contracts" (Notice ¶ 71) or by using other regulatory command-and-control measures.

At the same time, the Commission should recognize that its rules often impose additional costs that so raise the bar as to make it insurmountable. Incumbent LECs, for example, have large quantities of fiber deployed throughout their service territories, and their networks reach further into smaller communities than those of any competitor. They also have extensive experience in serving mass markets and smaller and more remote customers. If incumbents are permitted to take advantage of integrative efficiencies, they can make an economic case for deploying advanced services to more and smaller communities. But given the costs and difficulties inherent in deploying advanced services to less densely populated areas, the extra burdens of current and proposed Commission rules — including the interLATA prohibitions, the unbundling and discounted resale rules, and the proposed separate subsidiary rules — all conspire to decrease the number of communities in which deployment is economically feasible.

Other regulations, such as the Computer II/III CEI-plan rules, bar incumbent LECs from bringing new technologies and services to the public until the Commission grants a specific approval. The approval process results in significant delays: It took the Commission almost eleven months to approve a Bell Atlantic CEI plan for intranet management services, even though that petition was unopposed.[43/] In addition to running afoul of Congress's clear policies favoring the rapid dissemination of new technologies to the public, 47 U.S.C. § 157 and Act § 706(a), such delays result in significant losses of consumer welfare, as pent-up demand for these new services and technologies goes unmet. Economists estimate, for example, that the delays by the Commission and the MFJ court in permitting AT&T and the BOCs to provide voice messaging services cost consumers approximately $1 billion annually in lost welfare,[44/] and

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[43/] See Order, Bell Atlantic Telephone Companies' Offer of Comparably Efficient Interconnection to Intranet Management Service Providers, CCBPol Dkt. No. 98-01 (rel. Aug. 20, 1998).

[44/] See Jerry A. Hausman and Timothy J. Tardiff, Benefits and Costs of Vertical Integration of Basic and Enhanced Telecommunications Services 12-15 (1995). A copy of this study is attached as Attachment D.

regulatory restrictions delaying the introduction of cellular telephone services cost the economy approximately $25 billion annually in lost consumer surplus.[45] Consumers surely suffer similarly enormous harms from regulations that prevent carriers from providing them with new broadband and Internet services.

Other regulations also discourage incumbent LECs from investing in infrastructure and bringing new services and technologies to the public. For example:

- The price cap rules, and especially the artificial 6.5% productivity factor, inappropriately divert incumbent LECs' investment resources to the IXCs in the form of lower access charges. And as the Commission is aware, the IXCs do not necessarily pass these reductions on to their residential customers.

- Rules that give preferred regulatory treatment to companies using packet switching rather than circuit switching, including the so-called "ESP exemption," artificially distort technological development and investment. The rules discourage research and investment in circuit-switched technologies that could dramatically reduce costs to consumers and enable them to obtain new services. Packet switching may indeed displace circuit switching in many applications, but the market, not the Commission, should make that decision.

- Commission delays in processing new service applications slow the deployment of new technologies and services to the public. The Commission should expand its use of automatic or time-limited approval processes.

In sum, the Commission has a clear mandate from Congress and the public interest to deregulate. Only if the Commission chooses to limit its regulations to those situations where regulation is demonstrably necessary will all Americans receive the full benefits of market-driven, technological innovation. The Commission should proceed in this Inquiry with a firm intent of eliminating those regulations that, however well-meaning, stunt the development

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[45] See Jerry A. Hausman, "Valuation of New Goods Under Perfect and Imperfect Competition," MIT Working Paper (June 1994).

of a converged broadband marketplace and inhibit companies' incentives to invest in infrastructure and expand their service offerings.

Respectfully submitted,

/s/ William T. Lake

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ATTACHMENTS
to
Comments of US West Communications, Inc.
in
CC Docket No. 98-146

Tab	**Item**
A.	Letter to Frank Hatzenbuehler, U.S. West, from Robert G. Doctors, Booze-Allen & Hamilton, Inc., dated Sept. 2, 1997, and the study by Booze-Allen & Hamilton, Inc. The Benefits of RBOC Participation in the Enhance Services Market, (1995).
B.	Quality Strategies, US West High Capacity Market Study:Phoenix Metropolitan Statistical Area (1998).
C.	Petition of US West Communications, Inc., for Relief from Barriers to Deployment of Advanced Telecommunications Services, filed Feb. 25, 1998.
D.	Jerry A. Hausman and Timothy J. Tardiff, Benefits and Costs of Vertical Integration of Basic and Enhanced Telecommunications Services (1995).

ATTACHMENT A

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ROBERT G. DOCTERS
Principal

September 2, 1997

Mr. Frank Hatzenbuehler
Vice President Pricing/Regulatory Strategy
U S WEST
1801 California Street
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Dear Mr. Hatzenbuehler:

This letter regards Booz, Allen's 1995 study regarding the market for Enhanced Services.

We concluded on the basis of substantial market analysis that RBOC participation in the enhanced market was highly pro-competitive. Such participation tended to "legitimize" the market in the eyes of customers, tended to provide de-factor standards, and consequently benefited all participants in that market.

Based on ongoing material work on behalf of a variety of clients in this market (equipment manufacturers, RBOCs and alternative carriers) we believe that the conclusions contained in our 1995 study are equally valid today. We believe that the nature of this market is such that independent player continue to benefit from the participation of larger players. We believe that, just as in a number of other markets such as computer equipment, larger players can no longer dominate these markets. Indeed, enlisting smaller players as allies has become critical to large player success.

Should you have any questions, please do not hesitate to call me or Toby Dingemans (who led the initial study) at 212/551-6387.

Sincerely,

Bob Docters

Response to FCC NPRM

THE BENEFITS OF RBOC PARTICIPATION IN THE ENHANCED SERVICES MARKET

US WEST

April 4th, 1995
Denver

BOOZ•ALLEN & HAMILTON INC.

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I. INTRODUCTION

I. Introduction

In 1988, in Computer Inquiry III (CI-III), the FCC established Open Network Architecture (ONA) rules by which Regional Bell Operating Companies (RBOCs) could offer Enhanced Services without locating these services in structurally separate subsidiaries. After legal challenges to the CI-III framework, the FCC has issued a Notification of Proposed Rulemaking in which it considers the possibility of reverting to a requirement for structural separation. It has invited comments from industry.

Booz·Allen & Hamilton believes there is a compelling argument in Favor of CI-III rules. This argument breaks down into three key parts:

KEY ARGUMENTS IN FAVOR OF CI - III RULES

- Under CI-III rules, The RBOC's current and near-term service offerings contribute to the public good and have not harmed competitors
- Under CI-II rules, The RBOC's ability to offer these services would be diminished, and therefore the public good would be reduced and The RBOCs would be harmed
- Competitors would not be materially advantaged by structural separation (except by the weakening or elimination of a major competitor) because current safeguards against anti-competitive behavior are effective

At U S WEST's request, this document focuses on the evidence to support the first of these arguments. The other arguments are addressed in other documents. The evidence is broken down into three parts as described in **Table I.1: Benefits of the Current Rules Environment**. Evidence is first presented which demonstrates that the market for Enhanced Services is flourishing under existing rules. The second and third parts of this document present evidence about the two most important sectors that RBOCs have been involved in: Voice Messaging and Enhanced Fax Services. In Voice Messaging, the RBOCs have played an important role in developing the residential and small business sectors. In the Enhanced Fax market, the RBOC's participation has